***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NOs.16149 and 16155 2006

%14-09-2006

WP.No.16149/2006
Between:

#Bhupathiraju Satyanarayana Raju
and another. .. PETITIONERS

versus

$The Commissioner, State Election
Commission, Andhra Pradesh,
Hyderabad and 8 others. .. RESPONDENTS

WP.No.16155/2006
Between

#Pala Venkateswara Rao and 11 others. .. PETITIONERS

versus

$The Commissioner, State Election
Commission, Andhra Pradesh,
Hyderabad and 20 others. .. RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for petitioners in both the Writ Petitions**:** Sri Venugopal.
Sri T.S.Venkataramana.

^Counsel for Respondents in both the Writ Petitions. Sri Satya Prasad.
Sri M.Prabhakar Rao.
G.P. for Home
G.P. for Panchayat Raj.
Sri Challa Dhananjaya

Sri K.V.L.Narasimha Rao.

? Cases referred

1. 2004(2) SCC 759.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOS.16149 AND 16155 OF 2006

DATED 14.09.2006

WP.No.16149/2006

Between:

Bhupathiraju Satyanarayana Raju
and another. .. PETITIONERS

versus

The Commissioner, State Election
Commission, Andhra Pradesh,
Hyderabad and 8 others. .. RESPONDENTS

WP.No.16155/2006

Between

Pala Venkateswara Rao and 11 others. .. PETITIONERS

versus

The Commissioner, State Election
Commission, Andhra Pradesh,
Hyderabad and 20 others. .. RESPONDENTS

WRIT PETITION NOS.16149 AND 16155 OF 2006

COMMON ORDER:

These Writ Petitions are appearing in the list under the caption 'interlocutory'. At the request of the counsel on record, both the Writ Petitions are being disposed of finally.

2. On 4.8.2006 this Court issued Rule Nisi and granted interim stay

for a limited period of two weeks and subsequent thereto the same is being extended from time to time. Counter affidavits are filed on behalf of respondents 4 and 5 in both these Writ Petitions.

3. Writ Petition No.16149 of 2006 is filed praying for the issuance of a Writ of Mandamus declaring the unanimous election of the 7th respondent as Sarpanch as illegal, contrary to law and consequently direct the respondents 1 to 4 to conduct the election for members and Sarpanch of Gram Panchayat, Vendra village, Palakoderu Mandal, West Godavari District and pass such other suitable orders.

4. Writ Petition No.16155 of 2006 is filed for a Writ of Mandamus declaring the unanimous election of the respondents 10 to 21 as ward members as illegal, contrary to law and consequently direct the respondents 1 to 4 to conduct election for members and Sarpanch of Gram Panchayat, Vendra village, Palakoderu Mandal, West Godavari District and pass such other suitable orders.

5. It is needless to say that the first Writ Petition is concerned with the election of the Sarpanch and the second Writ Petition is concerned with the election of ward members of the self-same Gram Panchayat.

6. Inasmuch the allegations made in both these Writ Petitions being substantially the same and also the respective stands taken in the counter affidavits also being the same, for the purpose of convenience, both these Writ Petitions are being disposed of by this common order.

7. Sri Venugopal, learned counsel representing Sri T.S.Venkataramana, learned counsel representing the writ petitioners in both these Writ Petitions, had taken this Court through the factual matrix and would contend that in the light of the nature of the allegations made, it is not a case where the parties can be driven to the appropriate Election Tribunal and the Writ Court alone may have to further inquire or conduct a probe into this matter and issue suitable directions to the State Election Commission in this regard. The

learned counsel would submit that even in the light of the language of Rule 12 of Andhra Pradesh Panchayat Raj Election of Members in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1994 and also in the light of the averments made in the affidavits filed in support of the respective Writ Petitions, these aspects cannot be gone into by an Election Tribunal and hence even on a perusal of the record produced before this Court today, it is clear that the respective stands taken by the writ petitioners in both these Writ Petitions having been well established, the Writ Petitions are to be allowed or appropriate suitable directions are to be issued by this Court exercising powers under Article 226 of the Constitution of India.

8. Per contra, Sri Satya Prasad, learned Special Government Pleader, representing respondents 1 to 5 would maintain that though no doubt several allegations were made in the respective affidavits filed in support of the writ petitions, he would contend that these are all factual controversies which cannot be effectively gone into by the Writ Court. Even otherwise the learned counsel would maintain that inasmuch as in the light of the specific stands taken by the respondents 4 and 5, it is clear that the declaration of the results had been completed, the State Election Commission, having become *functus officio,* cannot issue any direction whatsoever and the remedy available to the petitioners is only by way of an Election Petition before appropriate Election Tribunal. The learned counsel also pointed out to the relevant portions of Rule 12 under G.O.Ms.No.111 referred to supra and would contend that all these factual controversies raised before this Court now can be appropriately and effectively gone into only by the Election Tribunal and hence this remedy under Article 226 of the Constitution of India in a way is misconceived. The learned counsel also placed strong reliance on the decision of the Apex Court in RAMPHAL KUNDU vs. KAMAL SHARMA[1].

9. Sri Challa Dhananjaya, learned counsel representing the respondents who were said to have been duly elected, made certain submissions in support of the stand taken by the learned Special Government Pleader, as referred to supra.

10. Heard the counsel on record and also perused the records produced before this Court.

11. At the outset it is made clear that this Court is not inclined to express any opinion relating to several factual controversies pointed out in relation to the records produced before this Court for the reasons which are being recorded infra.

12. As already referred to supra, in relation to the self-same Gram Panchayat the writ petitioners approached this Court praying for appropriate and suitable directions in relation to the election of the office of the Sarpanch and also the election of the ward members. The election schedule, the dates and the other particulars had been narrated in detail in respective affidavits. It is also stated that the first petitioner in Writ Petition No.16149 of 2006 filed his nomination paper on 17.7.2006 for contesting to the post of Sarpanch of Vendra village and the second petitioner also filed nomination paper on 17.7.2006 for the same post. It is also stated that the respondents 7 and 8 forcibly had taken away both these writ petitioners to their agricultural fields where they are cultivating the prawns and threatened with knife and deadly weapons and forcibly obtained signatures in Form-6 notice and the same was presented by 9th respondent before the 5th respondent, who is acting as Stage-I Officer. It is also stated that the petitioners did not present nor personally delivered the same before the 5th respondent. Rule 10 of the Conduct of Election of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad Rules, 1994 also had been referred to. Further, it was stated that crime No.86 dated 26.7.2006 was registered

and several other further factual details had been narrated at length in paragraphs 5, 6, 7, 8 and 9 of the affidavit filed in support of the Writ Petition No.16149 of 2006. Likewise in Writ Petition No.16155 of 2006 it was stated that all these petitioners filed their nomination papers for contesting for the respective wards as ward members of Vendra village and all of them started their campaign in their respective wards. While the matter stood thus, respondents 7 and 8 forcibly had taken away all the petitioners to their agricultural fields where they are cultivating prawns and threatened with knife and deadly weapons and forcibly obtained signatures in Form No.6 notice and the same was presented by respondents 9 to 21 before the 5th respondent, who was acting as Stage-I Officer. Crime No.86 dated 26.7.1006 and the registration thereof also had been referred to. Rule 10 referred to supra also had been specified. Several other factual details had been narrated no doubt making certain serious allegations in paragraphs 6, 7, 8 and 9 In substance these are the respective stands taken by the writ petitioners in both these Writ Petitions.

13. Though separate counter affidavits are filed in both these Writ Petitions, in substance, the stand taken in both these Writ Petitions by respondents 4 and 5 appear to be the same. All the allegations were denied. It is also stated by 4th respondent that the petitioners should have filed police complaint immediately after the incident had taken place, but they had not chosen to do so. Similarly they have also not filed any petition before any authority till 9 PM on 25.7.2006. It is further stated that the 5th respondent in his report dated 26.7.2006 stated that the petitioners themselves had appeared before him and presented Form No.7 duly signed by them before 3 PM on 23.7.2006, and the 5th respondent had also noted the time of receiving the Form No.7 notices presented by the persons who have withdrawn their nominations on Form No.7 itself and gave acknowledgements to the

respective persons. The 5th respondent also published notice in Form No.8 on 23.7.2006 in the Notice Board of Gram Panchayat, Vendra. The other allegations were specifically denied at paragraphs 4, 5 and 6 of the counter affidavit of 4th respondent.

14. The 5th respondent filed counter affidavit narrating the details in relation to the election schedule and also had taken a specific stand that this respondent was deputed for the election duty to the village in question and the nominations were received and scrutinized in accordance with the schedule issued by the State Election Commission. On 23.7.2006 the petitioners along with 51 others came to the Gram Panchayat office along with Form-7 withdrawal of nomination applications and submitted the same and after due scrutiny of withdrawal applications, which were filed before him in time, they were accepted and he had published Form-X, list of unanimously elected candidates for different posts of Gram Panchayat, on the notice board of Gram Panchayat on 23.7.2006 and this proceed was done and the work of Stage-I Officer for the election process was concluded by publishing Form-X list of elected candidates. It is also specifically stated that the contention of these petitioners that they were forcibly taken away by the respondents 8 and 9 to their agricultural fields, threatened with deadly weapons and forcibly obtained their signatures in Form-7 notice are not within the knowledge of this respondent, but it was stated that the fact remains that on 23.7.2006 the petitioners along with 51 contesting candidates, who have filed nominations, came to the office of Gram Panchayat Vendra and submitted withdrawal forms in Form-7 personally. It is also stated that this respondent verified the withdrawal forms and accepted the same after giving due acknowledgements to them. It is also stated that this respondent duly published the unanimously elected candidates list in Form-10 at Gram Panchayat Notice Board. Thereafter Form-29 (election certificates)

were given to the elected candidates on 23.7.2006, on the same day. It is also stated that surprisingly on 25.7.2006 at 6 PM when 5th respondent was attending election classes for Stage-II Officers, it was informed that the petitioners along with some other people of the Gram Panchayat staged a Dharna in front of M.P.D.O. Office alleging that respondents 8 and 9 in Writ Petition No.16149 of 2006 obtained signatures forcibly in the withdrawal forms and got it presented before the Stage-I Election Officer and got elected unanimously. Several other factual details had been narrated specifically denying several of the allegations and no doubt expressing want of knowledge to certain allegations in paragraphs 5 to 8 of the counter affidavit.

15. It is no doubt true that it appears to be an episode of mass withdrawal. As already referred to supra, this Court is not inclined to express any opinion relating to the records which had been produced before this Court especially in the light of the submissions made by the respective counsel on certain of the factual controversies and also especially in the light of the fact that these aspects may have to be gone into by the appropriate Election Tribunal in the event of the aggrieved parties, the writ petitioners, approaching the Election Tribunal by way of Election Petitions. Certain submissions were made that the matters of this nature cannot be gone into by the appropriate Election Tribunal and hence agitating the rights by way of Writ Petition alone would be the proper remedy. The learned Special Government Pleader representing respondents 1 to 5 placed strong reliance on Ramphal Kundus's case (1 supra) and the Apex Court at paragraph 24 observed as hereunder:

> "It may be noticed that the petition by Kamal Sharma was filed on 6.2.2000 and the same was allowed by the Election Commission the very next day i.e., on 7.2.2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the

order, the Election Commission issued any notice to Bachan Singh. Apparently, the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void *ab initio* and redraw the list of validly nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. (See *N.P. Ponnuswami v. Returning Officer* – AIR 1952 SC 64, *Mohinder Singh Gill v. Chief Election Commissioner* - (1978) 1 SCC 405 : AIR 1978 SC 851) and *Election Commission of India v. Shivaji* – (1988) 1 SCC 277 : AIR 1988 SC 61). Therefore, the order passed by the Election Commission on 7.2.2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained".

Apart from this aspect of the matter, Rule 12 of the Rules under G.O.Ms.No.111 referred to supra, reads as hereunder:

"If in the opinion to the Election Tribunal

(a) that on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) that any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his Election Agent or by any other person with consent of the Returned Candidate or his election agent, or

(c) that any nomination has been improperly rejected,

or

(d) that the result of the election, insofar as it concerns a Returned Candidate has been materially affected,

by the improper acceptance of any nomination, or

(i) by any corrupt practice, committed in the interest of the Returned Candidate by an agent other than his election agent, with the connivance of the Returned Candidate,

or

(ii) by the improper reception, refusal or rejection of any vote, or the reception of any vote which is void,

(iii) by any non-compliance with the provisions of the Act, or any Rules or orders made under the Act.

(A) The Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the Returned Candidate guilty under clause (b) and clause (b)(ii) of this Rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

16. It is needless to say that the appropriate Election Tribunal is competent to go into any corrupt practices as laid down under Section 211 of the Andhra Pradesh Panchayat Raj Act, 1994 and apart from it, the Election Tribunal also may go into any non-compliance with the provisions of the Act or any Rules or orders made under the Andhra Pradesh Panchayat Raj Act, 1994. Virtually if the contravention of the Rules or otherwise which may have some nexus with the factual controversies, those are being raised in the present Writ Petitions, this Court is of the opinion that these factual aspects cannot be gone into

by this Court at this stage. It may be that this is not a stray incident, but a case of mass withdrawal of a particular Gram Panchayat. The truth or otherwise of the episode may have to be gone into after adducing the necessary evidence before the appropriate Election Tribunal relating to all these factual controversies. Hence, without expressing any further opinion in relation to the other factual controversies and also certain discrepancies if any pointed out in the records produced before this Court, this Court is inclined to dispose of these Writ Petitions giving liberty to the writ petitioners to approach appropriate Election Tribunal, if the writ petitioners are so advised.

17. Accordingly the Writ Petitions are disposed of. There shall be no order as to costs.

14.09.2006

SSR
LR COPY TO BE MARKED:YES/NO.
Issue order copy tomorrow.
(BO)

---

[1](2004) 2 S.C.C. 759.